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Oceans and the law of the sea

Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its tenth meeting

Letter dated 10 July 2009 from the Co-Chairpersons of the Consultative Process addressed to the President of the General Assembly

Pursuant to General Assembly resolutions 54/33 of 24 November 1999, 57/141 of 12 December 2002, 60/30 of 29 November 2005 and 63/111 of 5 December 2008, we were appointed as the Co-Chairpersons of the tenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea.

We have the honour to submit to you the attached report on the work of the Consultative Process at its tenth meeting, which was held at United Nations Headquarters from 17 to 19 June 2009. The outcome of the meeting consists of our summary of the discussions held.

We kindly request that the present letter and the report of the Consultative Process be circulated as a document of the sixty-fourth session of the General Assembly under the agenda item entitled "Oceans and the law of the sea".

(*Signed*) Paul **Badji**
Don **MacKay**
Co-Chairpersons

* A/64/50.

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Tenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea

(17-19 June 2009)

Co-chairpersons' summary of discussions[1]

1. The tenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea was held from 17 to 19 June 2009 and, pursuant to General Assembly resolution 63/111, focused its discussions on the implementation of the outcomes of the Consultative Process, including a review of its achievements and shortcomings in its first nine meetings.

2. The meeting was attended by representatives of 103 States, 28 intergovernmental organizations and other bodies and 12 non-governmental organizations.

3. The following supporting documentation was available to the meeting: (a) report of the Secretary-General on oceans and the law of the sea (A/64/66); and (b) format and annotated provisional agenda of the meeting (A/AC.259/L.10).

4. The meeting also had before it submissions from the Group of 77 and China (A/AC.259/19) and Nigeria (A/AC.259/18).

Agenda items 1 and 2: Opening of the meeting and adoption of the agenda

5. The meeting was opened by Patricia O'Brien, Under-Secretary-General for Legal Affairs, The Legal Counsel, and by Sha Zukang, Under-Secretary-General for Economic and Social Affairs. In their introductory remarks, they both highlighted the important role and contribution of the Consultative Process in promoting discussions on the multidimensional and multidisciplinary aspects of oceans and the law of the sea and conveying issues for action to the General Assembly.

6. The two Co-Chairpersons, Paul Badji (Senegal) and Don MacKay (New Zealand) noted the timely topic of focus, which presented delegations with an opportunity to take stock and evaluate, in a comprehensive manner, the performance of the Consultative Process.

7. The meeting adopted the format and annotated provisional agenda of the meeting and approved the proposed organization of work.

Agenda item 3: General exchange of views

8. Item 3 was divided into two plenary sessions. Delegations focused their interventions on the topic of focus and exchanged views on issues that could benefit from attention in the future work of the General Assembly on oceans and the law of the sea.

[1] The summary is intended for reference purposes only and not as a record of the discussions.

9. The discussions held on the area of focus at the plenary meetings and within the panels are reflected in paragraphs 14 to 73 below.

10. In the course of the discussions, delegations expressed their appreciation for the report of the Secretary-General on oceans and the law of the sea. It was noted that the report provided a good overview of the way in which outcomes of the meetings of the Consultative Process had been incorporated into relevant General Assembly resolutions, and described the major actions subsequently taken by States and intergovernmental organizations. The view was expressed that the report sometimes had not been able to present the differing viewpoints that might exist on certain issues, raising concerns about setting the balance necessary for an objective debate. In that regard, reference was made to the inability to finalize agreed elements at the sixth and eighth meetings of the Consultative Process.

Area of focus: Implementation of the outcomes of the Consultative Process, including a review of its achievements and shortcomings in its first nine meetings

11. In accordance with the annotated agenda, discussions were structured around three segments: mandate, objectives and role of the Consultative Process; outcomes of the Consultative Process and their implementation; and format and methods of work of the Consultative Process. The first two segments were launched by presentations from panellists (see paragraphs 12 and 13 below).[2] The presentations were followed by discussions, during which delegations requested clarifications from the panellists.

1. Panel presentations

12. The first segment consisted of an overview of the mandate, objectives and role of the Consultative Process presented by Alan Simcock (former Co-Chair of the first three meetings of the Consultative Process) and Satya N. Nandan (former Secretary-General, International Seabed Authority and former Under-Secretary-General and Special Representative of the Secretary-General in the then Office of Ocean Affairs and the Law of the Sea, currently Chairman of the Western and Central Pacific Fisheries Commission).

13. The second segment, on outcomes of the Consultative Process and their implementation, was launched by five presentations made by Agustín Blanco-Bazán, Senior Deputy Director, Legal Affairs Division, International Maritime Organization (IMO); Matthew Gianni, Political and Policy Advisor, Natural Resources Defence Council, and Co-Founder, Deep Sea Conservation Coalition; Sebastian Mathew, Advisor, International Collective in Support of Fishworkers; Olajide Ayinla, Executive Director and Chief Executive Officer, Nigerian Institute for Oceanography and Marine Research; and Andrew Hudson, Principal Technical Advisor, International Waters, United Nations Development Programme and Deputy Coordinator of UN-Oceans.

[2] Available panel presentations and abstracts thereof can be accessed at www.un.org/depts/los/consultative_process/consultative_process.htm.

2. Plenary and panel discussions

(a) Mandate, objectives and role of the Consultative Process

14. Several delegations emphasized their general support for the Consultative Process as a unique forum for general discussions on comprehensive issues related to oceans and the law of the sea. It was noted that, prior to the establishment of the Consultative Process, there had been no forum at the international level for ocean-related discussions and for information exchanges between policymakers and experts.

15. Many delegations made reference to the history of the establishment of the Consultative Process. It was recalled that, in resolution 54/33, the General Assembly had decided, consistent with the legal framework provided by the United Nations Convention on the Law of the Sea and the goals of chapter 17 of Agenda 21, to establish the Consultative Process in order to facilitate the annual review by the Assembly, in an effective and constructive manner, of developments in ocean affairs by considering the Secretary-General's report and suggesting particular issues to be considered by the Assembly with an emphasis on areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced.

16. Many delegations also recalled decision 7/1 of the Commission on Sustainable Development.[3] Several delegations noted the conclusion of the Commission that, because of the complex and interrelated nature of the oceans, oceans and seas presented a special case in respect of the need for international coordination and cooperation, and its recommendation that an open-ended informal consultative process be established with the sole function of facilitating the effective and constructive consideration of matters within the General Assembly's existing mandate.

17. The principles contained in the decision of the Commission on Sustainable Development were underscored by many delegations, for example, that the creation of new institutions should be avoided and the exercise should not lead to the duplication and overlapping of current negotiations and particular debates taking place in specialized forums; that it was not intended for the General Assembly to pursue legal or juridical coordination among the different legal instruments; and that the Assembly should bear in mind the differing characteristics and needs of the different regions of the world. The view was expressed that decision 7/1 laid out the general considerations that should guide the work of the Consultative Process, including the notion that the United Nations Convention on the Law of the Sea set out the overall legal framework within which all activities in oceans and seas must be considered; that chapter 17 of Agenda 21 remained the fundamental programme of action for achieving sustainable development in respect to oceans and seas; and that neither instrument took priority. A statement was made that decision 7/1 barred the Consultative Process from considering issues addressed in specialized forums. Conversely, it was pointed out that that aspect of decision 7/1 was not specific to the Consultative Process, and that indeed the Consultative Process should provide an overview of all ocean issues in order to encourage cooperation and coordination.

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[3] *Official Records of the Economic and Social Council, 1999, Supplement No. 9* (E/1999/29), chap. I, sect. C, decision 7/1.

18. In terms of the objectives and role of the Consultative Process, several delegations emphasized that the vantage point of sustainable development was the perspective that conferred to the Consultative Process its unique character. They further noted that the open nature of the Consultative Process provided an opportunity for the exchange of views and sharing of information on oceans affairs from the prism of the three pillars of sustainable development. Those delegations emphasized that the Consultative Process should retrieve its original mandate, particularly in light of the multiple crises that threaten the attainment of many social, economic and environmental goals.

19. Many delegations noted that, although the Consultative Process had been established of the recommendation of the Commission on Sustainable Development, there had not been any interaction with the Commission so far. They noted that the Commission on Sustainable Development would not consider issues relating to oceans and the seas until 2014. They also stressed that, without the Consultative Process, there would have been no other forum in the United Nations system where issues relating to oceans and seas would have been considered from the perspective of sustainable development for a period of 15 years.

20. Several delegations emphasized that the Consultative Process was the only forum at the international level that dealt with ocean issues in an integrated manner, and noted the importance of that function, given the global ocean agenda. A view was expressed that the integrated approach had led to the consideration of different sectors and important transsectoral issues. It was also noted that the need for Governments and the wider international community to work together in an integrated way was as important today as in 1999.

21. It was also emphasized that the Consultative Process should not provide interpretations of the law of the sea and that the outcomes of the Consultative Process should not be considered by judicial bodies, such as the International Tribunal for the Law of the Sea.

22. In response to a query as to whether the Consultative Process had undergone a name change within the first two meetings, it was clarified that General Assembly resolution 54/33 did not provide a short title for the Consultative Process. Therefore, the co-chairs made a number of attempts to develop a short title, starting with the "United Nations Informal Process on Oceans". At the first meeting a number of delegations requested the inclusion of the words "law of the sea" in the title. The reference was, therefore, included. At the second meeting, other delegations requested the removal of the reference since they were of the view that it was inconsistent with the resolution, while others supported its retention. At the third meeting, the term "informal consultative process" began to be used.

(b) Outcomes of the Consultative Process and their implementation

23. Many delegations highlighted that the Consultative Process was a valuable mechanism for the discussion and examination of developments in ocean affairs and emphasized its role in the work of the General Assembly. Several delegations noted that the Consultative Process had met its goals of facilitating the annual review by the General Assembly of developments in ocean affairs, and in identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced. A view was expressed that the Consultative Process had exceeded initial expectations in this regard. It was also noted that the Consultative

Process had had a re-invigorating effect on the debates of the General Assembly on oceans and the law of the sea, which had become more focused and relevant and demonstrated the value of the work of the Consultative Process.

24. It was emphasized that the Consultative Process was particularly effective in drawing attention to key issues in the field of oceans and the law of the sea and in updating the relevant resolutions of the General Assembly to reflect current trends. Some delegations noted that many of the agreed elements of the Consultative Process had been incorporated in the resolutions of the General Assembly. It was also noted that, in some cases, the inputs of the Consultative Process had saved time and effort during the consultations, while in other cases the Consultative Process had helped to identify the limits of consensus and what could be achieved during the consultations.

25. Several delegations considered that the Consultative Process had fulfilled its intended function by providing a forum for broader and more in-depth discussion on selected topics. They noted that the Consultative Process had considered a large number of issues with socio-economic and environmental dimensions, and had shed light on emerging ocean-related challenges and laid the foundation for international action to address those challenges.

26. On the other hand, some delegations underlined that notwithstanding the original mandate of the Consultative Process in relation to sustainable development, a major concern with the discussions and outcomes of the Consultative Process had been the lack of focus on sustainable development and, in particular, its social dimension. For example, the topic of fisheries had been considered at several meetings of the Consultative Process but that development perspective had been poorly integrated.

27. Several delegations addressed the possibility of the Consultative Process providing a forum to discuss the achievement of the Millennium Development Goals in relation to oceans and seas and to act as a catalyst for cooperation and coordination in that regard. The question of whether the Consultative Process should address issues related to human rights, including ownership of resources in the marine environment, was raised by several delegations. In that context, it was noted that a greater focus on social dimensions and human rights would enhance stakeholders' involvement, especially in coastal communities. This could be achieved with a greater focus on cooperation and coordination, not only at the global level, but also at the national level, by ensuring that all relevant national authorities and other stakeholders participated in the integrated management of oceans and seas.

28. Several delegations noted that the Consultative Process had provided substantive input for a better understanding of the oceans by highlighting the issues, challenges and barriers to the implementation of ocean-related policies, and the ways in which cooperation and coordination at the intergovernmental and inter-agency levels should be enhanced. Some delegations also noted that information from the meetings of the Consultative Process had informed domestic discussions on oceans and marine-related policy issues. Furthermore, knowledge gained from the meetings had increased global, regional and national awareness and implementation of the important ocean issues and actions discussed.

29. Several delegations provided examples of how the outcomes of the nine meetings of the Consultative Process had been incorporated into relevant General Assembly resolutions, or identified subsequent actions taken by States and intergovernmental organizations pursuant to those resolutions. In particular, it was noted that actions had been taken concerning illegal, unreported and unregulated fishing, protection and preservation of the marine environment, conservation of biological diversity, protection of vulnerable marine ecosystems from destructive fishing practices, ecosystem approaches, sustainable use of marine resources, piracy, maritime safety and security, the genuine link, capacity-building, marine science and technology, marine pollution and degradation, land-based activities and integrated ocean management.

30. It was observed that it was difficult to determine the developments that could be traced directly to the outcomes of the Consultative Process. Additional information in the report of the Secretary-General on actions taken by States pursuant to General Assembly resolutions and outcomes of the Consultative Process would have been useful in assessing the utility of the Consultative Process.

31. As regards illegal, unreported and unregulated fishing, which had been addressed in the outcomes of a number of meetings of the Consultative Process, some delegations observed that concerns remained regarding the lack of capacity for monitoring, control and surveillance of activities of fishing vessels in developing countries; possible connections between illegal fishing and transnational organized crime; and flag State non-compliance or non-performance with respect to conservation and management measures. It was also noted that not all flag States allowed vessels flying their flag to operate without effective control.

32. The view was also expressed that the state of the world's fish stocks was critical and the question was posed if a possible option could be to apply the principles of the common heritage of mankind to fish stocks beyond areas of national jurisdiction.

33. The representative of the secretariat of the Food and Agriculture Organization of the United Nations (FAO) expressed the view that the Consultative Process had contributed to its work on combating illegal, unreported and unregulated fishing, in particular, the development of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing in 2001, which in turn had led to the ongoing efforts to negotiate a binding agreement on port State measures. It was noted that consideration of this issue once again by the Consultative Process could renew momentum on the issue and help overcome the lack of technical expertise necessary for implementation in some countries. It was also noted, however, that the issue was a complex one, and that it was important not to reopen negotiated outcomes, such as the definition of illegal, unreported and unregulated fishing in the International Plan of Action.

34. Some delegations stressed the role of the Consultative Process in the development of the "Assessment of Assessments", the start-up phase of the regular process for the global reporting and assessment of the state of the marine environment, including socio-economic aspects, and referred to the establishment of the ad hoc working group of the whole by General Assembly resolution 63/111. Also underlined by some delegations was the adoption of General Assembly resolution 61/105 regarding the impacts of bottom fisheries on vulnerable marine ecosystems, which had been an impetus for the adoption by FAO of the International Guidelines

for the Management of Deep-sea Fisheries in the High Seas. The positive institutional outcomes of the Consultative Process, for example, the establishment of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, were also highlighted.

35. Conversely, the view was expressed that the implementation of General Assembly resolution 61/105 by some States was not consistent with the sovereign rights of coastal States over their continental shelf. Furthermore, attention was drawn to the implementation of resolution 61/105 in relation to the Area. It was suggested that during the negotiation of the recommendations, there had been insufficient time for consultations regarding the consequences of the possible interpretations of the recommendations, which had led to confusion regarding maritime areas. This should be considered as a lesson learned regarding the effectiveness of the Consultative Process.

36. A view was expressed regarding the importance of finding a balance between the value of the Consultative Process and the General Assembly in addressing issues already discussed in other forums and the possibility of interfering with such discussions. The representative of IMO noted that the Consultative Process and the General Assembly would need to be mindful of ongoing negotiations in other forums.

37. The important role of IMO in developing international shipping standards and promoting their implementation was highlighted. The relationship between the Convention and IMO instruments was also addressed.

38. Several delegations observed that while the Consultative Process had served its original purpose, there was room for improvement in terms of substance, procedure and outcome in order to enable the Consultative Process to produce concrete contributions to the General Assembly. The view was expressed that support for the continuation of the Consultative Process was conditional upon improvements in terms of substance and procedure.

39. An analysis was presented of the extent to which the agreed consensual elements of the first nine meetings of the Consultative Process had been incorporated into the resolutions of the General Assembly, and the relative proportion of incorporated elements that related to the main areas of interest of developing countries, namely capacity-building, transfer of technology and financing. It was regretted that only a small proportion of the incorporated elements related to those particular areas. It was also stated that the measure of success of the Process did not necessarily lie in the production and subsequent incorporation into General Assembly resolutions of agreed elements.

40. Some delegations noted that where there had been a lack of a concrete outcome on a given subject dealt with by the Consultative Process, that did not mean that the Consultative Process had failed. In addition, where concrete outcomes were taken up in General Assembly resolutions, any subsequent lack of implementation also did not mean that the Consultative Process had failed; rather, the responsibility for implementation rested with Member States.

41. Several delegations emphasized that the Consultative Process needed to continue to be a forum to address measures aimed at enhancing cooperation and coordination on capacity-building as well as transfer of technology and questioned

whether developing countries effectively benefited from the consideration of those issues by the Consultative Process. A suggestion was made that the mandate of the Consultative Process should include a mechanism to coordinate capacity-building.

42. Some delegations addressed the desirability of regional and subregional approaches to capacity-building, while noting that commitment at the national level to assessing capacity needs and priorities and using the acquired capacity were at the core of the success of capacity-building programmes. It was also noted that capacity-building programmes had been developed both by developed countries and intergovernmental organizations to meet needs identified in the Consultative Process. In relation to the capacity-building programmes available through the United Nations and its agencies, some delegations proposed an evaluation of the impacts of such programmes. It was suggested that UN-Oceans and its members should be more active and visible in regions where the volume of ocean activities was very high, particularly in developing States. The Deputy Coordinator of UN-Oceans explained that there was no overarching strategy among UN-Oceans members in terms of their capacity-building activities. The evaluation of impacts was undertaken at the level of individual programmes, in the context of result-based frameworks, but that at the level of UN-Oceans no such exercise had been conducted.

43. Several delegations addressed the role of UN-Oceans in general. With regard to the strengthening of coordination and cooperation within the United Nations system, it was noted that UN-Oceans provided a useful forum and there was a good level of cooperation among the organizations that comprised it. Other delegations addressed the issue of UN-Oceans' effectiveness and transparency, particularly with reference to the difficulties in accessing UN-Oceans reports, in view of the mandate of the Consultative Process under resolution 54/33, paragraph 8 (b). Several delegations also raised the issue of whether UN-Oceans would be the appropriate forum for reporting to the Consultative Process on the achievement of the Millennium Development Goals in relation to oceans and seas. In relation to the UN-Oceans reporting mechanism, the Deputy Coordinator of UN-Oceans explained that a report on the activities of UN-Oceans was provided annually to the Consultative Process and acknowledged that UN-Oceans needed to update its website in order to provide further information on its activities.

(c) Format and methods of work of the Consultative Process

44. A view was expressed that a discussion of the format and methods of work of the Consultative Process should include how to select the topic of focus and which aspects of the topic should be discussed, as well as how to address the topic.

45. Several delegations emphasized that the process for considering and selecting the topics for the subsequent meetings should contribute to sustainable development and that a transparent, objective and inclusive process should be devised. Some delegations reiterated that delegations should select topics carefully with sustainable development in mind, and that delegations should prepare for the meetings with an understanding of the sustainable development aspects.

46. A view was expressed that the mandate provided in resolution 54/33 had not always been respected in the selection of topics. The meetings had not always provided an adequate opportunity to exchange views and share information on ocean affairs in the context of sustainable development in view of the limited scope

of the topics chosen, and this needed to be addressed in the selection of topics for future meetings. Some topics, such as climate change, sustainable fisheries, marine genetic resources and marine technology, were more easily seen through the lens of sustainable development than others, such as maritime security. It was noted also that other topics, such as transnational organized crime and issues related to terrorism, were more appropriately considered in other forums.

47. While it was important for the Consultative Process to remain focused on topics that fell within its mandate, this approach should also not discourage it from addressing sustainable development issues in a more comprehensive manner. Some delegations considered that all of the topics considered by the Consultative Process had links to sustainable development.

48. In selecting topics it was important to integrate new challenges and viewpoints in the work of the Consultative Process while, at the same time, it was essential to promote discussion on a topic of concern to developing countries.

49. With regard to cooperation and coordination, it was noted that overlaps among discussions of various forums could not be avoided in respect of certain issues. However, such overlaps could be minimized by giving an opportunity to relevant intergovernmental organizations to provide detailed briefings on developments in their forum. The Consultative Process could then focus on promoting and strengthening cooperation and coordination, on ensuring that Member States develop national plans of action and on integrated approaches to ocean and coastal management. Some delegations cautioned against excluding topics simply because they fell within the mandate of other forums, and noted that the Consultative Process was intended to strengthen collective, coordinated and integrated approaches.

50. It was observed that the existing mandate and working method had allowed for the flexibility needed to address the most important topics relevant to sustainable ocean management in an adequate manner, and the efficiency of the Consultative Process had improved in recent years. The discussion at the Consultative Process had become more focused, in particular, thanks to the choice of a single topic for each meeting.

51. Several delegations suggested that the Consultative Process should focus on certain topics for a number of years and continue to consider them as long as they were important. Most of the topics on the list of issues to be suggested to the General Assembly had not been taken up by the Consultative Process and that there was a need to prioritize certain topics from the list.

52. Delegations discussed ways to improve the selection of topics to be discussed by the Consultative Process. It was generally noted that earlier identification of issues would improve pre-meeting preparations and the discussions during the meeting. Several delegations supported the circulation of background or concept papers on proposed topics well in advance of the discussions, which could provide background information, identify possible sub-topics for panellists and possible questions for discussion. It would be important also to include information on why the proposed topic should be addressed by the Consultative Process. Some delegations suggested that proposed topics could be presented during the meeting and a preliminary discussion could take place on the topics before the General Assembly considered the issue. The meeting could devote a specific session to a

discussion for that purpose and recommended topics could be proposed by the Co-Chairpersons to the General Assembly.

53. In order to facilitate early preparations, some delegations supported the development of a two- or three-year programme for the Consultative Process, which would extend the mandate for a prescribed number of years with the topics to be addressed each year already agreed upon. In this context, some delegations noted the importance of retaining flexibility in the Consultative Process to discuss emerging or new issues. It was suggested that including a segment on new or emerging issues might be useful in that regard. Some delegations noted that in cases where synergies existed between topics it might be possible to consider more than one topic during a meeting of the Consultative Process. The view was expressed that the General Assembly should consider the programme of the Consultative Process on an annual basis. The issue of the timing of the meetings of the Consultative Process was also raised and whether it would be useful to hold the meeting during other calendar dates.

54. Several delegations highlighted that decisions on the topic of focus, and the emphasis given during the meeting to the topic of focus, must be consistent with the mandate of the Consultative Process and the three pillars of sustainable development. Several delegations supported the incorporation of sustainable development issues in the consideration of a proposed topic. It was noted in this context that the Consultative Process should not preclude itself from discussing topics that were dealt with in other forums, and there was a need to take a balanced and inclusive approach to all elements of sustainable development. A key question in this regard was whether the Consultative Process could add value to the discussion by addressing the issue in an integrated and comprehensive fashion. Several delegations highlighted the need for concrete, practical topics that allowed for focused discussion.

55. Several delegates emphasized the need to improve pre-meeting preparations, in particular by increasing the time available for such preparations. Many delegations pointed out that beginning the preparatory process earlier would improve the consideration of the topic by the Consultative Process and a number of specific proposals were made in this regard. Some delegations proposed initiating earlier with the Office of the President of the General Assembly the appointment of co-chairpersons. It was suggested that this could be done at the end of the term of the outgoing President, rather than at the beginning of the term of the incoming President. The co-chairpersons could be appointed for a two-year period. Some other delegations proposed a two-day preparatory meeting where discussions on the topic of focus could take place. It was noted that initiating the pre-meeting preparations earlier would have several benefits, including securing expert panellists. Some delegations noted that a database of experts would be useful.

56. The importance of the expertise of the panellists at the Consultative Process was highlighted by several delegations. The need for a wide representation of panellists from developing countries was emphasized by many delegations. It was noted that, while retaining the format, efforts should be made to ensure a balanced representation from developed and developing States and the practice of consultations with States should continue. It was also recognized that efforts had been made to include experts from developing countries on the list of panellists at previous meetings. It was noted that problems associated with the selection of

panellists were also due to the late appointment of the co-chairpersons, who then had insufficient time to prepare for a meeting. The importance for the panellists to be selected with the sustainable development mandate in mind was highlighted.

57. Several delegations called for enhanced efforts to ensure the participation of panellists from developing countries, and noted constraints in terms of financing and obtaining visas. It was noted that the voluntary trust fund established for the purpose of assisting developing countries, in particular least developed countries, small island developing States and landlocked developing States, required adequate and consistent funding, and that measures to facilitate and secure expertise from developing States was required. Several delegations emphasized the need to increase contributions to the voluntary trust fund to facilitate and secure the attendance of experts from developing countries. It was suggested that a letter from the Co-Chairpersons might be useful in this regard. It was also noted that sponsoring panellists to attend a meeting was an option.

58. Several delegations noted that the Consultative Process had provided a platform for a more integrated and interactive debate by bringing together experts, practitioners, decision makers and representatives of civil society, industry and other stakeholders. Some delegations emphasized the role of the Consultative Process in deepening the understanding of stakeholders involved in issues affecting the oceans and seas.

59. In relation to emerging issues, several delegations discussed whether the Consultative Process should simply identify emerging issues or also try to deal with them. Some delegations noted that the Consultative Process provided participants with the opportunity to develop their prospective positions on an emerging issue in an informal setting that included a full range of stakeholders. It was also stated that the Consultative Process should keep abreast of new and emerging issues, but not enter into negotiations concerning those issues. Yet another view was expressed that the Consultative Process should not address emerging issues under the purview of other forums.

60. One delegation suggested that future meetings of the Consultative Process could devote a segment to a briefing by the Secretariat, or UN-Oceans, on issues under deliberation in other forums as this would facilitate discussions of the Secretary-General's report as well as negotiations on the General Assembly resolution.

61. Many delegations emphasized the importance and value of the informal, open and inclusive nature of the Consultative Process for discussions on ocean affairs within the United Nations system. It was noted that the Consultative Process was a flexible process for the consideration of ocean issues with few limitations on what could be discussed.

62. Several delegations noted that the informal character of the Consultative Process, the broad participation in its meetings and the free flow of discussions were strengths that had led to the success and utility of the Consultative Process. Others were of the view that the Consultative Process provided an opportunity for an exchange of views and the sharing of information on oceans issues. The importance of participation by non-governmental organizations was highlighted.

63. Concerns were raised as to the participation in the Consultative Process of developing countries, including least developed countries and small island

developing States, which was of particular importance, not only so that they could take part in the discussions, but because it was within the mandate of the Consultative Process to bear in mind the needs of the different regions of the world.

64. Several delegations expressed concerns over the negotiation of agreed elements at the meetings of the Consultative Process. It was noted that, although the Consultative Process could propose elements for consideration by the General Assembly, the meetings of the Consultative Process had led to a negotiation exercise that had not been conducive to the effectiveness or utility of the Consultative Process. The effort put into seeking agreement on those elements was at the expense of time and energy that could be devoted to exchanging opinions and enhancing awareness of topics among participants, as well as promoting the three pillars of sustainable development.

65. One panellist suggested three possible explanations for the increasing difficulty in reaching consensus on the elements, namely: (a) increased ambition in the level of consensus sought; (b) dealing with issues where it was more difficult to identify areas of consensus; and (c) different views regarding the purpose of the Consultative Process.

66. Several delegations highlighted that resolution 54/33 did not require the Consultative Process to propose elements for consideration by the General Assembly. The Consultative Process could fulfil its mandate to "facilitate" the work of the Assembly either by preparing agreed elements for incorporation into the Assembly's resolutions or simply by drawing its attention to specific issues.

67. Some delegations expressed the view that the Consultative Process was not a decision-making body and that its outcomes should not be seen as imposing any obligation on Member States during consultations on the resolutions of the General Assembly. They emphasized that the Consultative Process had been established as a forum for the exchange of views and information and its informal and consultative nature did not lend itself to negotiating outcomes that could be perceived as binding. Some delegations noted in this regard the dangers of mixing a consultative process and a negotiating process.

68. It was also stressed by some delegations that the Consultative Process was not an authoritative forum for the progressive development of the law of the sea or the interpretation of the Convention and should not consider issues that were within the competence of the Meeting of States Parties to the Convention. Furthermore, it was noted that efforts to achieve an agreed outcome at meetings of the Consultative Process duplicated the functions of the consultations of the General Assembly on oceans and the law of the sea.

69. Some delegations noted that the reporting relationship of the Consultative Process to the General Assembly was an essential asset of the Consultative Process, but also emphasized that the desire to produce agreed elements had a negative impact on the effectiveness of the process, and had come at a cost of devoting sufficient time and energy to the exchange of opinions and enhancement of awareness on the topic of focus. In this regard, some delegations observed that the Consultative Process should focus more on the exchange of information.

70. It was also noted that there was a need to ensure that the Consultative Process continued to make a substantive contribution to the collective understanding of oceans issues and did not become unfocused or irrelevant. In this context, some

delegations pointed out that consensus should be sought when it could be identified, and noted that the elaboration of consensual elements helped to structure the debates of the Consultative Process. The view was expressed that by negotiating agreed elements, the Consultative Process could facilitate the informal consultations on the draft resolutions of the General Assembly by shortening the time necessary for those discussions. Conversely, it was noted that the consensual elements were often renegotiated during the consultations. It was further underscored that the difficulty did not lie with the negotiation of consensual elements, but the perception that such elements should bind delegations in the context of the informal consultations.

71. The view was also expressed that any outcome of the Consultative Process should enjoy the support of all participants in order to provide the General Assembly with the consensual views of the Consultative Process. It was also noted that the debate should be the principle element of the Consultative Process and should be facilitated by a mechanism developed by the Co-Chairpersons in consultation with Member States. Some delegations indicated that the outcome should be in the form of a concise statement or summary of discussions prepared by the Co-Chairpersons reflecting the factual deliberations of the meeting and indicating areas where consensus was viewed as possible. Yet another opinion was expressed that it would be helpful for the Co-Chairpersons to seek the views of delegations on perceived areas of consensus, in order to avoid misunderstandings.

72. Several delegations noted that the negotiations were the cause of practical concerns that could diminish the universality of any agreement reached. Some delegations emphasized the need to change the practice of considering the agreed elements on the last day of the meeting to ensure that all delegations were able to communicate with their capitals on an equal footing. Delegations with few or only one delegate often found themselves at a decided disadvantage when meetings proceeded into late hours and stressed that that practice could not continue. Another delegation recalled that developing States had expressed their reservation to the practice of holding late sessions to forge consensus on the agreed elements in the absence of interpretation in all official languages, and noted that this presented a problem for their effective participation. However, it was also noted that, while delegations should not be forced to reach consensus to arrive at agreed elements, the Consultative Process should recognize "natural consensus" where it existed.

(d) Issues which could benefit from attention in the future work of the Consultative Process

73. The meeting was presented with a composite streamlined list prepared by the Co-Chairpersons of issues that could benefit from attention in the future work of the General Assembly on oceans and the law of the sea.[4] Some delegations referred to issues where further efforts were needed, in particular, illegal, unreported and unregulated fishing, including as it might relate to international organized crime; piracy and armed robbery; maritime safety and security; oceans and climate change; climate change as it relates to security and survival, particularly for low-lying coastal areas and low-lying island nations; preservation of the marine environment; protection of living resources; safety of navigation and the production of nautical charts; sustainable use of ocean resources; impact of unfair subsidies on the fishing industry of developing States; cooperation and coordination among flag States,

[4] http://www.un.org/depts/los/consultative_process/composite_list_issues_2008.pdf.

coastal States and port States in the implementation of the Convention; and conservation as it relates to marine life and environment. Other issues that were mentioned during the tenth meeting included undersea noise pollution; marine protected areas; ecosystem management mechanisms to address and prevent species decline and extinction; ocean acidification and its effects on food security; and the effect of ocean temperature changes on fish stocks. It was noted that means of implementation, capacity-building and transfer of appropriate technology were cross-cutting issues.

Agenda item 4: Consideration of the outcome of the meeting

74. As indicated at the time of the adoption of the agenda, the Co-Chairpersons presented a summary of discussions of the tenth meeting under agenda item 4. The meeting generally endorsed the Co-Chairpersons' summary of discussions. Some delegations made some suggestions which the Co-Chairpersons agreed to reflect in the final text.